



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/538,543 | 03/30/2000 | Edward A. Hubbard | BAY3:002 | 8287 |

7590 05/05/2005

KELLY K. KORDZIK
WINSTEAD SECHREST & MINICK P.C
POST OFFICE BOX 50784
1201 MAIN STREET
DALLAS, TX 75250-0784

EXAMINER

COULTER, KENNETH R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2141

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/538,543

Applicant(s)

EDWARD A. HUBBARD

Examiner

Kenneth R. Coulter

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004 (Appeal Brief).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 53-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 53-59, 61, 63-69, 71 and 73 is/are rejected.
- 7) ☒ Claim(s) 60, 62, 70 and 72 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. In view of the Appeal Brief filed on 12/27/2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Applicant's arguments with respect to claims 53 – 59, 61, 63 – 69, 71, and 73 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2141

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 53 – 58, 61, 63 – 68, 71, and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Armentrout et al. (U.S. Pat. No. 6,463,457) (System and Method for the Establishment and the Utilization of Networked Idle Computational Processing Power).

4.1 Regarding claim 53, Armentrout discloses a method of configuring a distributed parallel processing system, comprising:

providing a server system (Abstract “server”);

coupling the server system to a network, the network being connectable to distributed devices (Fig. 1 “CTS” (centralized task server); Abstract);

providing a notice to the distributed devices of a desire by the server system to configure the distributed parallel processing system through coupling selected ones of the distributed devices through the network, wherein the selected distributed devices are enabled by the server system to perform workloads for the configured distributed parallel processing system (col. 4, lines 40 – 51; col. 24, lines 39 – 56 “offering incentives” (see below); col. 5, lines 2 - 14);

Art Unit: 2141

providing an incentive to the distributed devices communicating with the server system through the network in response to the notice to *participate* in the configured distributed parallel processing system (col. 24, lines 39 – 56 (see below));

The present invention can also be **employed in other manners**, such as a method of marketing computers by **offering incentives to computer customers that agree to operate** a compute engine (CE) on the computers and having the **CE utilize idle computational processing power** on the computers. Incentives can include, but are not limited to free computer use, free ISP service, discounted computer sales price, discount computer lease price, a sales rebate, periodic rebates, and usage fees. The CE can also be utilized to deliver "pushed" content, such as advertising, to these computer customers via a display window of said computer's graphic interface or via said computer's sound output.

generating a workload capability factor quantifying workload processing capability for each of the selected distributed services (col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 - 67);

managing the selected distributed devices participation in the configured distributed parallel processing system by the server system utilizing the workload capability factor (Abstract; Fig. 1; col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 - 67).

4.2 Per claim 54, Armentrout teaches generating an incentive value for a distributed device in response to a completed workload (col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 – 67; col. 24, lines 39 – 56).

Art Unit: 2141

4.3 Regarding claim 55, Armentrout teaches generating an incentive value for a distributed device in response to a workload capability factor generated for the distributed device (col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 – 67; col. 24, lines 39 – 56).

4.4 Per claim 56, Armentrout teaches that the workload capability factor is generated in response to a performance in completing a benchmark workload (col. 12, lines 41 – 45 “**benchmark** tasks on provider computers”).

4.5 Regarding claim 57, Armentrout discloses that the server system schedules and allocates workloads to the selected distributed devices based upon the workload capability factor generated in response to the performance in completing the benchmark workload (col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 – 67; col. 24, lines 39 – 56).

4.6 Per claim 58, Armentrout teaches that the workload capability factor is generated in response to a workload completed by one of the selected distributed devices for the configured distributed parallel processing system (col. 5, lines 2 – 14; col. 12, lines 41 – 45 and 62 – 67; col. 24, lines 39 – 56).

4.7 Regarding claim 61, Armentrout discloses the step of transferring a software agent from the server system to the selected distributed devices, wherein the software

Art Unit: 2141

agent manages a workload performed by the selected distributed devices (Abstract; Figs. 1, 2; col. 12, lines 36 - 45).

4.8 Regarding claims 63 – 68, 71, and 73, the rejection of claims 53 – 58 and 61 under 35 USC 102(e) (paragraphs 4.1 – 4.7 above) applies.

In addition, storage devices that are necessary to implement the system of Armentrout are inherent in the Armentrout reference.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 59 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout as applied to claims 53 and 63 respectively above, and further in view of London.

6.1 Regarding claims 59 and 69, Armentrout does not explicitly disclose that the workload capability factor is utilized to determine an entry value to a sweepstakes.

Art Unit: 2141

Armentrout does teach the “**offering (of) incentives** to computer customers that agree to operate a compute engine (CE) on the computers ... **Incentives can include, but are not limited to** free computer use, fee ISP service, ...” (col. 24, lines 39 – 50).

London discloses that the workload capability factor is utilized to determine an entry value to a sweepstakes (p. 12, third paragraph “One may think of several **motivations for one processor to provide CPU-time to another**: ... 6. **Lottery**”; p. 26, paragraph 3 “A **computelet** is an object that carries a computation intended for **remote execution**.”).

It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the lottery incentive of London in the system of Armentrout because Armentrout offers incentives to “agree to operate a compute engine” (col. 24, line 40). The use of a lottery as an incentive to donate idle processing power is disclosed in London.

Therefore, the use of a lottery (sweepstakes) in Armentrout is an example of benefit obtained from the offering of the idle processing power.

Allowable Subject Matter

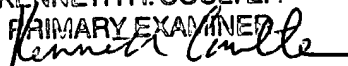
7. Claims 60, 62, 70, and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 2141

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 703 305-8447. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 703 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KENNETH R. COULTER
PRIMARY EXAMINER


krc